

REMARKS

Claims 1-44 are pending with claims 1, 34, 41, and 43 being independent. Claims 41-44 are newly presented. Support for these claims can be found at least at page 1, line 13 to page 3, line 17 and page 22, lines 27 and 28. No new matter has been added. Applicant requests consideration and allowance of these new claims.

Claims 1-40 have been rejected under the judicially created doctrine of obviousness-type double patenting as being obvious over claims 1-36 of U.S. Application No. 10/067,973, now U.S. Patent No. 6,773,325 (the '325 patent). Applicant respectfully submits that the requirement of a terminal disclaimer in the pending application is obviated by the submission of a terminal disclaimer in the '325 patent that disclaims that portion of the term of the '325 patent extending beyond the term of the pending application. In particular, the Examiner is directed to MPEP §804 I. B., which explains:

if the "provisional" double patenting rejections in both applications are the only rejections remaining in those applications, the examiner should then withdraw that rejection in one of the applications (e.g., the application with the earlier filing date) and permit the application to issue as a patent. The examiner should maintain the double patenting rejection in the other application as a "provisional" double patenting rejection which will be converted into a double patenting rejection when the one application issues as a patent.

The double patenting rejection was maintained in the '325 patent and applicant submitted a terminal disclaimer in the '325 patent. Applicant respectfully requests that the Examiner withdraw the rejection and the requirement of a terminal disclaimer in the pending application.

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Enclosed is a \$600.00 check for excess claim fees. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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